A **KARPAL SINGH RAM SINGH v. PP & ANOTHER APPEAL (NO 2)**

COURT OF APPEAL, PUTRAJAYA
MOHTARUDIN BAKI JCA
TENGKU MAIMUN TUAN MAT JCA
KAMARDIN HASHIM JCA
B [CRIMINAL APPEALS NO: W-05(S)-66-03-2014 & W-05-78-03-2014]
3 AUGUST 2016

CRIMINAL PROCEDURE: *Sentence – Appeal against – Conviction under s. 4(1)(b) of Sedition Act 1948 – Mitigating factors – Whether considered –*
C *Whether appellant a respectable public figure – Whether sentence set aside – Whether substituted with a lighter fine of not more than RM2,000*

The appeals were formerly lodged by the late Karpal Singh Ram Singh ('YB Karpal') against both conviction and sentence handed down by the High
D Court under s. 4(1)(b) of the Sedition Act 1948. YB Karpal was fined RM4,000 in default four months imprisonment for the conviction. Before the appeals were heard and disposed of by this court, YB Karpal had passed away on 17 April 2014. By an order of this court, the appeals were allowed to be proceeded by the widow of YB Karpal as substitute. The appellant submitted that the trial judge had misdirected himself on the question of sentence which
E warranted appellate intervention. The appellant alleged that the trial judge had failed to consider, *inter alia*, mitigating factors. The appellant further sincerely prayed that the fine imposed by the trial judge be reduced to a figure of not more than RM2,000 as anything more than that would have disqualified YB Karpal as a Member of Parliament which would effectively
F deprive him of his pension under art. 48 of the Federal Constitution.

Held (allowing appeal)
Per Kamardin Hashim JCA delivering the judgment of the court:

(1) The prosecution had no quarrel about the fact that YB Karpal deserved
G respect and that YB Karpal was a person with vast experience and was knowledgeable in law, and a public figure. YB Karpal had also contributed to the development of the law in Malaysia. Taking into account all of the abovementioned factors into consideration, this court was moved and inclined to allow the appeal against the sentence. The
H sentence imposed was thus set aside and substituted with the sentence of a fine of RM1,800 in default two months imprisonment. Since the fine of RM4,000 had been paid, this court made an order that the difference be refunded. (paras 10 & 11)

Bahasa Malaysia *Headnotes*

I Rayuan-rayuan difailkan oleh mendiang Karpal Singh Ram Singh ('YB Karpal') terhadap kedua-dua sabitan dah hukuman yang dijatuhkan oleh Mahkamah Tinggi di bawah s. 4(1)(b) Akta Hasutan 1948. YB Karpal

didenda RM4,000 jika gagal membayar penjara empat bulan atas sabitan. Sebelum rayuan-rayuan didengar dan dilupuskan oleh mahkamah ini, YB Karpal meninggal dunia pada 17 April 2014. Melalui perintah mahkamah ini, rayuan-rayuan dibenarkan untuk diteruskan oleh balu YB Karpal sebagai pengganti. Perayu menghujahkan bahawa hakim bicara tersalah arah, atas persoalan hukuman yang memerlukan campur tangan rayuan. Perayu seterusnya memohon supaya denda yang dikenakan oleh hakim bicara dikurangkan kepada satu jumlah yang tidak melebihi RM2,000 kerana jumlah yang lebih daripada itu akan menyebabkan YB Karpal tidak layak menjadi Ahli Parlimen yang secara efektifnya akan melucutkan pencennya di bawah per. 48 Perlembagaan Persekutuan.

Diputuskan (membenarkan rayuan)
Oleh Kamardin Hashim HMR menyampaikan penghakiman mahkamah:

(1) Pihak pendakwaan tidak mempertikaikan fakta bahawa YB Karpal berhak dihormati dan YB Karpal adalah seorang yang berpengalaman luas dan berpengetahuan berkenaan undang-undang, dan juga tokoh masyarakat. YB Karpal telah menyumbang kepada perkembangan undang-undang di negara ini. Mengambil kira kesemua fakta-fakta, mahkamah ini membenarkan rayuan terhadap hukuman. Hukuman yang dijatuhkan diketepikan dan digantikan dengan hukuman denda RM1,800 jika gagal membayar dua bulan penjara. Oleh kerana denda RM4,000 telah dibayar, mahkamah ini memerintahkan supaya perbezaannya dibayar balik.

Case(s) referred to:
Lim Guan Eng v. PP [2000] 2 CLJ 541 FC ***(refd)***
PP v. Mark Koding [1982] 1 LNS 96 HC ***(refd)***
PP v. Oh Keng Seng [1978] 1 LNS 160 HC ***(refd)***
PP v. Ooi Kee Saik & Ors [1971] 1 LNS 113 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 173A, 320
Federal Constitution, art. 48
Sedition Act 1948, ss. 3(1)(f), 4(1)(b)

For the appellant - Gobind Singh Deo, Ramkarpal Singh, Alif Balkin, Malik Imtiaz, Mohd Haijan Omar, S Prakash, Ravin Jay, R. Rishi & RSN Rayer; M/s Karpal Singh & Co
For the respondent - Awang Armadajaya Awang Mahmud & Hamdan Hamzah; DPPs

[Editor's note: For the High Court judgment, please see PP lwn. Karpal Singh Ram Singh [2009] 9 CLJ 688 (overruled).]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Kamardin Hashim JCA:

[1] The appeals were formerly lodged by the late Karpal Singh a/l Ram Singh (YB Karpal) against both conviction and sentence handed down by the
B High Court under s. 4(1)(b) of the Sedition Act 1948. YB Karpal was fined RM4,000 in default four months imprisonment for the conviction. The said fine has since been paid.

[2] Before the appeals been finally heard and disposed of by this court, YB Karpal had passed away on 17 April 2014 in a motor vehicle accident.
C By virtue of s. 320 of the Criminal Procedure Code (CPC), both the appeals should finally be abated on the death of the YB Karpal. Nevertheless, by an order of this court dated 10 November 2014, the appeals were allowed to be proceeded by the widow of YB Karpal as substitutes. Section 320 of the CPC provides:

D

> 320. Death of parties to appeal
>
> Every appeal under section 306 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal against a sentence of fine) shall finally abate on the death of the appellant.

E **[3]** On 30 May 2016, by way of majority decision (Justice Tengku Maimun Tuan Mat (dissenting)), we dismissed the appeal against conviction. For that we have given our reasons for doing so. On the same day, after hearing both parties, we allowed the appeal against sentence whereby we set aside the fine of RM4,000 in default of four months imprisonment imposed
F by the learned trial judge and we substituted it with a fine of RM1,800 in default of two months imprisonment.

[4] Before us, on sentence, learned counsel for the appellant submitted that the learned trial judge had misdirected himself, on the question of sentence which warrants appellate intervention. There were five issues raised
G before us by learned counsel to which were argued that learned trial judge had failed to consider. They were as follows:

(a) Intention of YB Karpal in holding the press conference;

(b) Sentence in similar past cases;

H (c) Mitigating factors;

(d) Section 3(1)(f) of the Act was no longer in effect at time of sentence; and

(e) Equality before the law.

[5] Mr Ramkarpal Singh, on behalf of the appellant submitted that the
I learned trial judge had failed to consider that YB Karpal in uttering the words complained of were merely giving his legal opinion without any malice.

It was submitted that intention, although not an ingredient for proof of the offence, is a mitigating factor. Mr Ramkarpal Singh relied on *PP v. Oh Keng Seng* [1978] 1 LNS 160; [1979] 2 MLJ 174 and *PP v. Ooi Kee Saik & Ors* [1971] 1 LNS 113; [1971] 2 MLJ 108.

[6] Learned counsel further submitted that the trial judge had failed to consider similar cases in the past beside only heavily rely on *Lim Guan Eng v. PP* [2000] 2 CLJ 541; [2000] 2 MLJ 577. Mr Ramkarpal Singh submitted that there should be no disparity in sentence and urged us to follow the sentence imposed by Mohammed Azmi J in *PP v. Mark Koding* [1982] 1 LNS 96; [1983] 1 MLJ 111 where the respondent in that case was placed on good behaviour bond under s. 173A of the CPC.

[7] On the issue of mitigation, learned counsel submitted that the learned trial judge had failed to consider the facts and issues raised during mitigation. Such mitigating factors which learned trial judge had failed to consider and not reflected in the learned trial judge grounds of judgment includes *inter alia*:

(a) YB Karpal was a leading criminal and constitutional lawyer in Malaysia;

(b) YB Karpal had contributed immensely to the development in the fields of criminal and constitutional law;

(c) YB Karpal was the Member of Parliament for Bukit Gelugor, Alor Setar Bandar and Jelutong since 1974 beside been a State Assemblymen for Bukit Gelugor between 1978 and 1999;

(d) YB Karpal was the Chairman of the Democratic Action Party (DAP); and

(e) YB Karpal was awarded with the Glory of India Award of Excellence in 2011. He was also named as one of the top 10 NRI Newsmakers of 2008 and he is without a doubt a national figure, a towering Malaysian. His achievements are to be found in part in the book "*The Tiger of Jelutong*" published in 2014.

[8] In his submission before us, learned counsel had referred to some of the comments made by renowned judges about YB Karpal's impeccable character which deserved consideration. Among others, Raja Azlan Shah CJ (Malaya) had said that "Mr Karpal Singh, who appeared for the appellant, if we may say so, most ably and who took every point that could be taken …"

[9] Finally, learned counsel sincerely pray that the fine imposed by the learned trial judge to be reduced to the figure of not more than RM2,000, as anything more than that would have disqualified YB Karpal as a Member of Parliament which would effectively deprive him of his pension under art. 48 of the Federal Constitution.

[10] Learned deputy, in the person of Mr Awang Armadajaya bin Awang Mahmud take the stand that the prosecution had no quarrel about the fact that YB Karpal deserved the respect and that YB Karpal is a person with vast experience and knowledgeable in law, and a public figure. Learned deputy as well appreciated YB Karpal contribution in the development of the law in Malaysia. For that, the learned deputy had informed this court that they had withdrawn their appeal against sentence.

[11] Taken into account of all the abovementioned factors into consideration, we are moved and inclined to allow the appeal against sentence. We set aside the sentence imposed by the learned trial judge. We substitute it with the sentence of a fine of RM1,800 in default of two months imprisonment. Since the fine of RM4,000 had been paid, we make an order that the different be refunded.